

**DEPARTMENT OF SOCIAL SERVICES**

744 P Street, Sacramento, CA 95814



December 31, 2004

Regulation Package #0902-23

CDSS MANUAL LETTER NO. CCL-04-14

TO: HOLDERS OF THE COMMUNITY CARE LICENSING MANUAL, TITLE 22, DIVISION 6,  
CHAPTER 8, RESIDENTIAL CARE FACILITIES FOR THE ELDERLY

**Regulation Package #0902-23****Effective 8/20/04****Sections 87101, 87219, 87219.1, 87454, 87565, and 87566**

This manual letter has been posted on the Office of Regulations Development website at [http://www.dss.cahwnet.gov/ord/Residentia\\_635.htm](http://www.dss.cahwnet.gov/ord/Residentia_635.htm).

As a result of testimony received from the public hearing and at the Department's discretion, post-hearing changes have been made to the regulations readopted on March 11, 2004. Those changes include that regardless of a pardon, expungement, or sealing of an individual's record by a court, the individual signing a LIC 508 must declare whether he/she has been convicted of a crime. The definition of "rehabilitation" is clarified to include "the effort to establish good character since the date of the last conviction." Also clarified is that individuals, except for certified foster parents, may request a criminal record exemption on their own behalf. In addition, for certified administrators, a copy of their current and valid Administrative Certification meets the requirement in Section 87566(a)(13)(B). Furthermore, Section 87219(d)(3)(B) is repealed since it deals with a different facility type, not RCFEs. Finally, minor grammatical and nonsubstantive corrections have also been made.

These regulations were considered at the Department's public hearing held on September 17, 2003.

**FILING INSTRUCTIONS**

**Revisions to all manuals are indicated by a vertical line in the left margin.** The attached pages are to be entered in your copy of the Manual of Policies and Procedures. The latest prior manual letter containing Community Care Licensing changes was Manual Letter No. CCL-04-13. The latest prior manual letter containing Residential Care Facilities for the Elderly regulation changes was Manual Letter No. CCL-04-03.

**Page(s)****Replace(s)**

6.1 through 7.2  
8.2 and 9  
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35 and 36  
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Attachments

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**87101 DEFINITIONS (Continued)****87101**

- (6) Ambulatory Person. "Ambulatory Person" means a person who is capable of demonstrating the mental competence and physical ability to leave a building without assistance of any other person or without the use of any mechanical aid in case of an emergency.
  - (7) Automated External Defibrillator. "Automated External Defibrillator" (AED) means a light-weight, portable device used to administer an electric shock through the chest wall to the heart. Built-in computers assess the patient's heart rhythm, determine whether defibrillation (electrical shock) is needed and then administer the shock. Audible and/or visual prompts guide the user through the process.
  - (8) Applicant. "Applicant" means any individual, firm, partnership, association, corporation, county, city, public agency or other government entity that has made application for a residential care facility for the elderly license, administrator certificate, or special permit.
  - (9) Appropriately Skilled Professional: Means an individual that has training and is licensed to perform the necessary medical procedures prescribed by a physician. This includes but is not limited to the following: Registered Nurse (RN), Licensed Vocational Nurse (LVN), Physical Therapist (PT), Occupational Therapist (OT) and Respiratory Therapist (RT). These professionals may include, but are not limited to, those persons employed by a home health agency, the resident, or facilities and who are currently licensed in California.'
- (b) (1) Basic Rate. "Basic Rate" means the SSI/SSP established rate, which does not include that amount allocated for the recipient's personal and incidental needs.

**87101 DEFINITIONS (Continued)****87101**

- (2) Basic Services. "Basic Services" means those services required to be provided by the facility in order to obtain and maintain a license and include, in such combinations as may meet the needs of the residents and be applicable to the type of facility to be operated, the following: safe and healthful living accommodations; personal assistance and care; observation and supervision; planned activities; food service; and arrangements for obtaining incidental medical and dental care.

- (c) (1) California Clearance. "California Clearance" means an individual has no felony or misdemeanor convictions reported by the California Department of Justice. However, the individual may have been arrested with no criminal conviction, convicted of a minor traffic offense or adjudicated as a juvenile.

- (2) Capacity. "Capacity" means that maximum number of persons authorized to be provided services at any one time in any licensed facility.

- (3) Care and Supervision. "Care and Supervision" means those activities which if provided shall require the facility to be licensed. It involves assistance as needed with activities of daily living and the assumption of varying degrees of responsibility for the safety and well-being of residents. "Care and Supervision" shall include, but not be limited to, any one or more of the following activities provided by a person or facility to meet the needs of the residents:

- (A) Assistance in dressing, grooming, bathing and other personal hygiene;
- (B) Assistance with taking medication; as specified in Section 87575;
- (C) Central storing and distribution of medications, as specified in Section 87575;
- (D) Arrangement of and assistance with medical and dental care. This may include transportation, as specified in Section 87575;
- (E) Maintenance of house rules for the protection of residents;
- (F) Supervision of resident schedules and activities;
- (G) Maintenance and supervision of resident monies or property;
- (H) Monitoring food intake or special diets.

**87101 DEFINITIONS (Continued)****87101**

- (4) Certificate holder. "Certificate holder" means a person who has a current administrator's certificate issued by the Department regardless of whether the person is employed as an administrator in a residential care facility for the elderly.
- (5) Certified administrator. "Certified administrator" means an administrator who has been issued a residential care facility for the elderly administrator certificate by the Department and whose certificate is current.
- (6) Classroom hour. "Classroom Hour" means sixty (60) minutes of classroom instruction with or without a break. It is recommended that no more than twenty (20) minutes of break time be included in every four (4) hours of instruction. No credit is given for meal breaks.
- (7) Close friend. "Close friend" means a person who is attached to another by feelings of personal regard as indicated by both parties involved.
- (8) Co-locate. "Co-locate" means that a vendor applicant is approved for more than one program type, i.e., ARF, RCFE, GH, and has received approval to teach specific continuing education courses at the same time and at the same location. Co-location is allowed for Continuing Education Training Program vendors only.
- (9) Community Care Facility. "Community Care Facility" means any facility, place or building providing nonmedical care and supervision, as defined in Section 87101c.(2).
- (10) Complete request. "Complete request" means the vendor applicant has submitted, and the Department has received, all required information and materials necessary to approve or deny the request for certification program and/or course approval.
- (11) Conservator. "Conservator" means a person appointed by the Superior Court pursuant to the provisions of Section 1800 et seq. of the Probate Code or Section 5350 of the Welfare and Institutions Code, to care for the person, or estate, or person and estate, of another.
- (12) Consultant. "Consultant" means a person professionally qualified by training and experience to provide expert information on a particular subject.
- (13) Continuing Care Contract. "Continuing Care Contract" is defined in Health and Safety Code Section 1771(c)(8).

## 87101 DEFINITIONS (Continued)

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“Continuing care contract” means a contract that includes a continuing care promise made, in exchange for an entrance fee, the payment of periodic charges, or both types of payments. A continuing care contract may consist of one agreement or a series of agreements and other writings incorporated by reference.”

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- | (14) Continuing Education Training Program Vendor. “Continuing Education Training Program Vendor” means a vendor approved by the Department to provide continuing education training courses to residential care facility for the elderly administrators and certificate holders to qualify them for renewal of their residential care facility for the elderly administrator certificate.
- | (15) Control of Property. "Control of Property" means the right to enter, occupy, and maintain the operation of the facility property within regulatory requirements. Evidence of control of property shall include, but is not limited to, the following:
  - (A) A Grant Deed showing ownership; or
  - (B) The Lease Agreement or Rental Agreement; or
  - (C) A court order or similar document which shows the authority to control the property pending outcome of probate proceeding or estate settlement.
- | (16) Conviction. “Conviction” means:
  - (A) A criminal conviction in California; or
  - (B) Any criminal conviction of another state, federal, military or other jurisdiction, which if committed or attempted in California, would have been punishable as a crime in California.
- | (17) Course. "Course" means either, (1) a quarter- or semester-long structured sequence of classroom instruction covering a specific subject, or (2) a one-time seminar, workshop, or lecture of varying duration.
- | (18) Criminal Record Clearance. “Criminal Record Clearance” means an individual has a California clearance and an FBI clearance.

**87101 DEFINITIONS (Continued)****87101**

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"Department" means the State Department of Social Services.

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- | (6) Dietitian. "Dietitian" means a person who is eligible for registration by the American Dietetic Association.
- | (7) Direct care staff. "Direct care staff" means the licensee, and/or those individuals employed by the licensee, who provide direct care to the residents, including, but not limited to, assistance with activities of daily living.
- | (8) Director. "Director" is defined in Health and Safety Code, Section 1569.2(c).

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"Director" means the Director of the State Department of Social Services.

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- | (9) Do-Not-Resuscitate (DNR) Form. "Do-Not-Resuscitate Form" means the pre-hospital do-not-resuscitate forms developed by the California Emergency Medical Services Authority and by other local emergency medical services agencies. These forms, when properly completed by a resident or (in certain instances) a resident's Health Care Surrogate Decision Maker, and by a physician, alert pre-hospital emergency medical services personnel to the resident's wish to forego resuscitative measures in the event of the resident's cardiac or respiratory arrest.
- | (10) Documentation. "Documentation" means written supportive information including but not limited to the Licensing Report (Form LIC 809).
- (e) (1) Egress Alert Device. "Egress Alert Device" means a wrist band or other device which may be worn by a resident or carried on a resident's person, which triggers a visual or auditory alarm when the resident leaves the facility building or grounds.

**87101 DEFINITIONS (Continued)****87101**

- (2) Elderly Person. "Elderly Person" means, for purposes of admission into a residential care facility for the elderly, a person who is sixty (60) years of age or older.
- (3) Emergency Approval to Operate. "Emergency Approval to Operate" (EAO) means a temporary approval to operate a facility for no more than 60 days pending the issuance or denial of a license by the licensing agency.
- (4) Evaluator. "Evaluator" means any person who is a duly authorized officer, employee or agent of the Department including any officer, employee or agent of a county or other public agency authorized by contract to license community care facilities.
- (5) Evidence of Licensee's Death. "Evidence of Licensee's Death" shall include, but is not limited to, a copy of the death certificate, obituary notice, certification of death from the decedent's mortuary, or a letter from the attending physician or coroner's office verifying the death of the licensee.
- (6) Exception. "Exception" means a variance to a specific regulation based on the unique needs or circumstances of a specific resident or staff person. Requests for exceptions are made to the licensing agency by an applicant or licensee. They may be granted for a particular facility, resident or staff person, but cannot be transferred or applied to other individuals.
- (7) Existing Facility. "Existing Facility" means any facility operating under a valid license on the date of application for a new license.
- (f) (1) Facility Hospice Care Waiver. "Facility Hospice Care Waiver" means a waiver from the limitation on retention of residents who require more care and supervision than other residents and residents who are bedridden other than for a temporary illness. The Hospice Care Waiver granted by the Department will permit the retention in a facility of a designated maximum number of terminally ill residents who are receiving hospice services from a hospice agency. The Facility Hospice Care Waiver will apply only to those residents who are receiving hospice care in compliance with a hospice care plan meeting the requirements of Section 87716.
- (2) Federal Bureau of Investigation (FBI) Clearance. "Federal Bureau of Investigation Clearance" means an individual has no felony or misdemeanor convictions reported by the FBI. The individual may also have been arrested with no criminal conviction, convicted of a minor traffic offense or adjudicated as a juvenile.
- (g) (1) Guardian. "Guardian" means a person appointed by the Superior Court pursuant to the provisions of Section 1500 et seq. of the Probate Code to care for the person, or person and estate, of another.



**87101 DEFINITIONS (Continued)****87101**

- (r) (1) Rehabilitation. "Rehabilitation" means the effort to reestablish good character since the date of the last conviction, including, but not limited to, education, counseling or therapy, training, stable employment, restitution, remorse, changes in lifestyle, or community service.
- (2) Relative. "Relative" means spouse, parent, stepparent, son, daughter, brother, sister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin or any such person denoted by the prefix "grand" or "great", or the spouse of any of the persons specified in this definition, even if the marriage has been terminated by death or dissolution.
- (3) Renewal Vendor Application. "Renewal Vendor Application" means the application form, LIC 9141, used to request approval from the Department to continue another two (2) years as an approved vendor.
- (4) Request to Forego Resuscitative Measures. A "Request to Forego Resuscitative Measures" is defined in Probate Code Section 4753(b).

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**87219 CRIMINAL RECORD CLEARANCE (Continued)****87219**

- (c) A licensee or applicant for a license may request a transfer of a criminal record clearance from one state licensed facility to another, or from TrustLine to a state licensed facility by providing the following documents to the Department:
- (1) A signed Criminal Background Clearance Transfer Request, LIC 9182 (Rev. 4/02).
  - (2) A copy of the individual's:
    - (A) Driver's license, or
    - (B) Valid identification card issued by the Department of Motor Vehicles, or
    - (C) Valid photo identification issued by another state or the United States government if the individual is not a California resident.
  - (3) Any other documentation required by the Department (e.g., LIC 508, Criminal Record Statement [Rev. 1/03] and job description).

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- (4) Section 1569.17(g) of the Health and Safety Code states:

The California Department of Social Services shall hold criminal records clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal records clearances to be transferred.

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- (d) All individuals subject to criminal record review shall be fingerprinted and sign a Criminal Record Statement (LIC 508 [Rev. 1/03]) under penalty of perjury.
- (1) A person signing the LIC 508 must:
    - (A) Declare whether he/she has been convicted of a crime, other than a minor traffic violation as specified in Section 87219(h) regardless of whether the individual was granted a pardon for the conviction, received an expungement pursuant to Penal Code 1203.4 or the individual's record was sealed as a result of a court order.
    - (B) If convicted of a crime other than a minor traffic violation as specified in Section 87219(h), provide information regarding the conviction.

**87219 CRIMINAL RECORD CLEARANCE (Continued)****87219**

- (2) If the signed statement indicates a conviction for any crime other than a minor traffic violation for which the fine was \$300 or less, the licensee shall immediately notify the Department and the Department will take appropriate action as specified in Section 87219(h). The Department shall take the same actions as would be taken in Health and Safety Code Section 1569.17(c) if a criminal record transcript had been received.
- (3) The license shall submit these fingerprints to the California Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, or comply with Section 87219(c), prior to the individual's employment, residence, or initial presence in the community care facility.
  - (A) Fingerprints shall be submitted to the California Department of Justice by the licensee or sent by electronic transmission to the California Department of Justice by a fingerprinting entity approved by the California Department of Social Services.
- (e) All individuals subject to a criminal record review pursuant to Health and Safety Code Section 1569.17(b) shall prior to working, residing or volunteering in a licensed facility:
  - (1) Obtain a California clearance or a criminal record exemption as required by the Department or
  - (2) Request a transfer of a criminal record clearance as specified in Section 87219(c) or
  - (3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 87219.1(r), unless, upon request for a transfer, the Department permits the individual to be employed, reside or be present at the facility.

<b>87219</b>	<b>CRIMINAL RECORD CLEARANCE (Continued)</b>	<b>87219</b>
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- (j) The license shall maintain documentation of criminal record clearances or criminal record exemptions of employees in the individual's personnel file as required in Section 87566.
- (k) The licensee shall maintain documentation of criminal record clearances or criminal record exemptions of volunteers that require fingerprinting and non-client adults residing in the facility.
  - (1) Documentation shall be available at the facility for inspection by the Department.
- | (l) The Department may seek verification from a law enforcement agency or court of an individual's criminal record as reported to the Department from any member of the public or affected individual.
  - | (1) Upon obtaining confirmation from a law enforcement agency or court of the offense, the Department shall proceed as if this criminal record information was provided by the California Department of Justice.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Section 1569.17, Health and Safety Code; and Section 42001, Vehicle Code.

**87219.1 CRIMINAL RECORD EXEMPTION****87219.1**

- (a) The Department will notify a licensee to act immediately to terminate the employment of, remove from the facility or bar from entering the facility any person described in Sections 87219.1(a)(1) through (5) below while the Department considers granting or denying an exemption. Upon notification, the licensee shall comply with the notice.
- (1) Any person who has been convicted of, or is awaiting trial for, a sex offense against a minor;
  - (2) Any person who has been convicted of a felony;
  - (3) Any person who has been convicted of an offense specified in Sections 243.4, 273a, 273d, 273g, or 368 of the Penal Code or any other crime specified in Health and Safety Code Section 1569.17(c)(3);
  - (4) Any person who has been convicted of any crime specified below:
    - (A) Battery
    - (B) Shooting at Inhabited Dwelling
    - (C) Corporal Injury on Spouse/Cohabitant
    - (D) Discharging Firearm with Gross Negligence
    - (E) Exhibiting Weapon/Firearm
    - (F) Threat to Commit a Crime Resulting in Gross Bodily Injury or Death
    - (G) Criminal Threat to Harm or Injure Another Person
    - (H) Cruelty to Animals
    - (I) Willful Harm or Injury to Child; or
  - (5) Any other person ordered to be removed by the Department.
- (b) In addition to the requirements of Section 87219.1(a), the licensee must return the confirmation of removal form that is sent by the Department, within five (5) days of the date of the form, that confirms under penalty of perjury that the individual has been removed from the facility.

**87219.1 CRIMINAL RECORD EXEMPTION (Continued)****87219.1**

- (1) Confirmation must be made on either a Removal Confirmation – Exemption Needed, LIC 300A (Rev. 9/03), Removal Confirmation - Denial, LIC 300B (Rev. 9/03), Removal Confirmation - Rescinded, LIC 300C (Rev. 9/03), or Removal Confirmation - Nonexemptible, LIC 300D (Rev. 9/03).

- (c) After a review of the criminal record transcript, the Department may grant an exemption if:

- (1) The applicant/licensee requests an exemption in writing for himself or herself, or
- (2) The applicant/licensee requests an exemption in writing for an individual associated with the facility, or
- (3) The applicant/licensee chooses not to seek an exemption on the affected individual's behalf, the affected individual requests an individual exemption in writing, and
- (4) The affected individual presents substantial and convincing evidence satisfactory to the Department that he/she has been rehabilitated and presently is of such good character as to justify being issued or maintaining a license, employment or residence in a licensed facility.

- (d) To request a criminal record exemption, a licensee or license applicant must submit information that indicates that the individual meets the requirements of Section 87219.1(c)(4). The Department will send a written notice to the licensee or license applicant that lists the information that must be submitted to request a criminal record exemption. The information must be submitted within forty-five (45) days of the date of the Department's notice.

- (1) Individuals who submit a criminal record exemption request shall cooperate with the Department by providing any information requested by the Department, including, but not limited to, police reports and certified court documents to process the exemption request, pursuant to Section 87219.1(e).
- (2) If the individual for whom the criminal record exemption is requested is an employee or resident other than a spouse or dependent family member and the licensee/license applicant does not submit the information listed in the Department's written notice within 45 days of the date of the notice, the Department may cease processing the exemption request and close the case.
- (3) If the individual for whom the criminal record exemption is requested is an applicant, licensee, spouse or dependent family member and the licensee/license applicant does not submit the information listed in the Department's written notice within 45 days of the date of the notice, the Department may deny the exemption request.

**87219.1 CRIMINAL RECORD EXEMPTION (Continued)****87219.1**

- (4) Individuals may request a criminal record exemption on their own behalf if the licensee or license applicant:

- (A) Chooses not to request the exemption and
- (B) Terminates the individual's employment because of the individual's criminal history, or
- (C) Removes the individual who resides in the facility because of the individual's criminal history.

- (e) The Department shall consider factors including, but not limited to, the following as evidence of good character and rehabilitation:

- (1) The nature of the crime including, but not limited to, whether it involved violence or a threat of violence to others.
- (2) Period of time since the crime was committed and number of offenses.
- (3) Circumstances surrounding the commission of the crime that would demonstrate the unlikelihood of repetition.
- (4) Activities since conviction, such as employment or participation in therapy or education, that would indicate changed behavior.
- (5) Granting by the Governor of a full and unconditional pardon.
- (6) Character references.
  - (A) All character references shall be on a Reference Request form (LIC 301E - Exemptions [Rev. 7/03]).
- (7) A certificate of rehabilitation from a superior court.
- (8) Evidence of honesty and truthfulness as revealed in exemption application documents.

- (A) Documents include, but are not limited to:

- 1. A Criminal Record Statement (LIC 508, Criminal Record Statement [Rev. 1/03]) and
- 2. The individual's written statement/explanation of the conviction and the circumstances about the arrest.



**87219.1 CRIMINAL RECORD EXEMPTION (Continued)****87219.1**

- (9) Evidence of honesty and truthfulness as revealed in exemption application interviews and conversations with the Department.
- (f) The Department shall also consider the following factors in evaluating a request for an exemption:
  - (1) Facility and type of association.
  - (2) The individual's age at the time the crime was committed.
- (g) The Department may deny an exemption request if:
  - (1) The licensee and/or the affected individual fails to provide documents requested by the Department, or
  - (2) The licensee and/or the affected individual fails to cooperate with the Department in the exemption process.
- (h) The reasons for any exemption granted or denied shall be in writing and kept by the Department.
- (i) The Department has the authority to grant a criminal record exemption that places conditions on the individual's continued licensure, and employment or presence in a licensed facility.
- (j) It shall be conclusive evidence that the individual is not of such good character as to justify issuance of an exemption if the individual:
  - (1) Makes a knowingly false or misleading statement regarding:
    - (A) Material relevant to their application for a criminal record clearance or exemption,
    - (B) His or her criminal record clearance or exemption status to obtain employment or permission to be present in a licensed facility, after the Department has ordered that they be excluded from any or all licensed facilities, or
    - (C) His or her criminal record clearance or exemption status in order to obtain a position with duties that are prohibited to him/her by a conditional exemption; or
  - (2) Is on probation or parole.
    - (A) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the Department may, in its discretion, grant a criminal record exemption notwithstanding Section 87219.1(j)(2).

**87219.1 CRIMINAL RECORD EXEMPTION (Continued)****87219.1**

- (k) The Department shall consider granting a criminal record exemption if the individual's criminal history meets all of the applicable criteria specified in Sections 87219.1(k)(1) through (6) and the individual provides the Department with substantial and convincing evidence of good character as specified in Section 87219.1(c)(4). For purposes of this section, a violent crime is a crime that, upon evaluation of the code section violated and/or the reports regarding the underlying offense, presents a risk of harm or violence.
- (1) The individual has been convicted of one nonviolent misdemeanor, and one year has lapsed since completing the most recent period of incarceration or probation.
  - (2) The individual has been convicted of two or more nonviolent misdemeanors and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
  - (3) The individual has been convicted of one or more violent misdemeanors and 15 consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
  - (4) The individual has been convicted of one nonviolent felony and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
  - (5) The individual has been convicted of two or more nonviolent felonies and ten consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
  - (6) The individual has not been convicted a violent felony.
  - (7) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the period of lapsed time required in Sections 87219.1(k)(1) through (5) above shall begin from the last date of conviction(s).
- (l) It shall be a rebuttable presumption that an individual is not of such good character as to justify the issuance of an exemption if the individual fails to meet the requirements specified in Sections 87219.1(k)(1) through (6).

**87219.1 CRIMINAL RECORD EXEMPTION (Continued)****87219.1**

- (4) It has been at least five consecutive years since the completion of the most recent period of incarceration or supervised probation.
- (o) At the Department's discretion, an individual who is otherwise eligible for a simplified exemption may be required to go through the standard exemption process if the Department determines such action will help to protect the health and safety of clients.
- (p) If the Department denies or cannot grant a criminal record exemption the Department shall:
  - (1) For initial applicants, deny the application.
  - (2) For current licensees, the Department may institute an administrative action, including, but not limited to, revocation of the license.
  - (3) For current employees, exclude the affected individual pursuant to Health and Safety Code Section 1569.58, deny the application or revoke the license if the individual continues to provide services and/or reside at the facility.
  - (4) For individuals residing in the facility or the licensee, exclude the affected individual pursuant to Health and Safety Code Section 1569.58, deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.
- (q) If a request for an exemption has been denied, the individual shall be excluded for a period of two years unless the individual has been convicted of a crime for which no exemption may be granted pursuant to Section 87219.1(m). If a request for an exemption has been denied based on a conviction of a crime for which no exemption may be granted, the individual shall be excluded for the remainder of the individual's life.
  - (1) If the Department determines during the review of an exemption request, that the individual was denied an exemption for a conviction of a crime for which an exemption may be granted within the preceding two years, the Department shall cease any further review of the request until two years have elapsed from the date of the denial. In cases where the individual requested a hearing on an exemption denial, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department upholding the denial. In cases where the individual submitted a petition for reinstatement or reduction in penalty pursuant to Government Code Section 11522 that was denied, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department denying the petition.

**87219.1 CRIMINAL RECORD EXEMPTION (Continued)****87219.1**

- (2) An exclusion order based solely upon a denied exemption shall remain in effect and the individual shall not be employed in or present in a licensed facility or certified home, unless either a petition or an exemption is granted.
  - (3) If an individual who has previously been denied an exemption re-applies after the relevant time period described in Section 87219.1(q)(1) above, the Department may, in accordance with the provisions in Section 87219.1 et seq., grant or deny the subsequent request for an exemption.
  - (4) If an individual submits a petition pursuant to Government Code Section 11522 for reinstatement or reduction of penalty for an exclusion, an individual must submit his/her fingerprints through an electronic fingerprinting system approved by the Department and submit to the Department a statement of the reason why the individual should be permitted to work or be present in a facility, along with all information required of an individual requesting a criminal record exemption as provided in Section 87219.1. If it is determined, based upon information provided by the Department of Justice, that the individual has been convicted of a crime for which no exemption may be granted, the petition shall be denied. An individual's failure to submit fingerprints or other information as requested by the Department, shall be grounds for denial of the petition. The burden shall be on the petitioner to prove sufficient rehabilitation and good character to justify the granting of the petition.
- (r) A licensee or applicant for a license may request a transfer of a criminal record exemption from one state licensed facility to another by providing the following documents to the Department:
- (1) A signed Criminal Record Exemption Transfer Request, LIC 9188 (Rev. 9/03).
  - (2) A copy of the individual's:
    - (A) Driver's license, or
    - (B) Valid identification card issued by the Department of Motor Vehicles, or
    - (C) Valid photo identification issued by another state of the United States Government if the individual is not a California resident.
  - (3) Any other documentation required by the Department (e.g., LIC 508, Criminal Record Statement [Rev. 1/03] and job description).

**87219.1 CRIMINAL RECORD EXEMPTION (Continued)****87219.1**

- (s) The Department may consider factors including, but not limited to, the following in determining whether or not to approve the transfer of an exemption from one facility to another:
  - (1) The basis on which the Department granted the exemption;
  - (2) The nature and frequency of client contact in the new position;
  - (3) The category of facility where the individual wishes to transfer;
  - (4) The type of clients in the facility where the individual wishes to transfer;
  - (5) Whether the exemption was appropriately evaluated and granted in accordance with existing exemption laws or regulations; or
  - (6) Whether the exemption meets current exemption laws or regulations.
- (t) If the Department denies the individual's request to transfer a criminal record exemption, the Department shall provide the individual and the licensee with written notification that states the Department's decision and informs the affected individual of their right to an administrative hearing to contest the Department's decision.
- (u) At the Department's discretion, an exemption may be rescinded if it is determined that:
  - (1) The exemption was granted in error, or
  - (2) The exemption does not meet current exemption laws or regulations, or
  - (3) The conviction for which an exemption was granted subsequently becomes non-exemptible by law.

**87219.1 CRIMINAL RECORD EXEMPTION (Continued)****87219.1**

- (v) The Department may rescind an individual's criminal record exemption if the Department obtains evidence showing that the individual engaged in conduct which is inconsistent with the good character requirement of a criminal record exemption, as evidenced by factors including, but not limited to, the following:
- (1) Violations of licensing laws or regulations;
  - (2) Any conduct by the individual that indicates that the individual may pose a risk to the health and safety of any individual who is or may be a client;
  - (3) Nondisclosure of a conviction or evidence of lack of rehabilitation that the individual failed to disclose to the Department, even if it occurred before the exemption was issued; or
  - (4) The individual is convicted of a subsequent crime.
- (w) If the Department rescinds an exemption the Department shall:
- (1) Notify the licensee and the affected individual in writing; and
  - (2) Initiate an administrative action.
- (x) If the Department learns that an individual with a criminal record clearance or exemption has been convicted of a subsequent crime, the Department, at its sole discretion, may immediately initiate an administrative action to protect the health and safety of clients.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Section 1569.17, Health and Safety Code; and Section 42001, Vehicle Code.

**87452 DEFICIENCIES IN COMPLIANCE (Continued)****87452**

2. The number of residents affected.
  3. The availability of equipment or personnel necessary to correct the deficiency.
  4. The estimated time necessary for delivery and any installation of necessary equipment.
- (B) The evaluator shall require correction of the deficiency within 24 hours and shall specify on the notice the date by which the correction must be made whenever penalties are assessed pursuant to Sections 87454(c), (d) and (e).
- (C) The date for correcting a deficiency shall not be more than 30 calendar days following service of the notice of deficiency, unless the evaluator determines that the deficiency cannot be completely corrected in 30 calendar days. If the date for correcting the deficiency is more than 30 days following service of the notice of deficiency the notice shall specify action which must be taken within 30 calendar days to begin correction.
- (5) The amount of penalty which shall be assessed and the date the penalty shall begin if the deficiency is not corrected by the specific due date.
- (6) The address and telephone number of the licensing office responsible for reviewing notices of deficiencies for the area in which the facility is located.

NOTE: Authority cited: Section 1569.30 and 1569.49, Health and Safety Code. Reference: Sections 1569.30, 1569.31, 1569.312, 1569.315, 1569.335, 1569.485, 1569.49 and 1589.49, Health and Safety Code.

**87453 FOLLOW-UP VISITS TO DETERMINE COMPLIANCE****87453**

- (a) A follow-up visit shall be conducted within 10 working days following the latest date of correction specified in the notice of deficiency, unless the licensee has demonstrated that the deficiency was corrected as required in the notice of deficiency. No penalty shall be assessed unless a follow-up visit is conducted.
- (b) If a follow-up visit indicates that a deficiency was not corrected on or before the date specified in the notice of deficiency, the evaluator shall issue a notice of penalty.
- (c) A notice of penalty shall be in writing and shall include:
- (1) The amount of penalty assessed, and the date the payment is due.
  - (2) The name and address of the agency responsible for collection of the penalty.

**87453 FOLLOW-UP VISITS TO DETERMINE COMPLIANCE (Continued)****87453**

- (d) When an immediate penalty has been assessed pursuant to Sections 87454(c), (d), (e) and (f) and correction is made when the evaluator is present, a follow-up visit is not required.

NOTE: Authority cited: Section 1569.30 and 1569.49, Health and Safety Code. Reference: Sections 1569.33, 1569.335, 1569.35, 1569.485, and 1569.49, Health and Safety Code.

**87454 PENALTIES****87454**

- (a) A penalty of \$50 per day, per cited violation, shall be assessed for all serious deficiencies that are not corrected by the date specified in the notice of deficiency, up to a maximum of \$150 per day.
- (b) Notwithstanding Section 87454(a) above, an immediate penalty of \$100 per cited violation shall be assessed if any individual required to be fingerprinted under Health and Safety Code Section 1569.17(b) has not obtained a California clearance or a criminal record exemption, requested a transfer of a criminal record clearance or requested and be approved for a transfer of an exemption as specified in Section 87219(e) prior to the individual's employment, residence or initial presence in the facility.
- (1) The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1569.17.
- (2) Progressive civil penalties specified in Sections 87454(d) and (e) shall not apply.
- (c) Notwithstanding Section 87454(a) above, an immediate penalty of \$150 per day shall be assessed for any of the following:
- (1) Sickness, injury or death of a client has occurred as a result of the deficiency.
- (d) When a facility is cited for a deficiency and violates the same regulation subsection within a 12-month period, the facility shall be cited and an immediate penalty of \$150 per cited violation shall be assessed for one day only. Thereafter a penalty of \$50 per day, per cited violation, shall be assessed until the deficiency is corrected.
- (e) When a facility that was cited for a deficiency subject to the immediate penalty assessment specified in Section 87454(d) above violates the same regulation subsection within a 12-month period of the last violation the facility shall be cited and an immediate penalty of \$1,000 per cited violation shall be assessed for one day only. Thereafter, a penalty of \$100 per day, per cited violation, shall be assessed until the deficiency is corrected.



**87565 PERSONNEL REQUIREMENTS - GENERAL (Continued)****87565**

- (g) Prior to employment or initial presence in the facility, all employees and volunteers subject to a criminal record review shall:
- (1) Obtain a California clearance or a criminal record exemption as required by law or Department regulations or
  - (2) Request a transfer of a criminal record clearance as specified in Section 87219(c) or
  - (3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 87219.1(r), unless, upon request for a transfer, the Department permits the individual to be employed, reside or be present at the facility.
- (h) All services requiring specialized skills shall be performed by personnel qualified by training or experience in accordance with recognized professional standards.
- (i) Residents shall not be used as substitutes for required staff but may, as a voluntary part of their program of activities, participate in household duties and other tasks suited to the resident's needs and abilities.
- (j) Volunteers may be utilized but may not be included in the facility staffing plan. Volunteers shall be supervised.

NOTE: Authority cited: Sections 1569.30 and 1569.625, Health and Safety Code. Reference: Sections 1569.17, 1569.30, 1569.31, 1569.312, and 1569.625, Health and Safety Code; and Section 42001, Vehicle Code.

**87566 PERSONNEL RECORDS****87566**

- (a) Personnel records shall be maintained on the licensee, administrator and each employee and shall contain the following information:
- (1) Employee's full name.
  - (2) Social Security number.
  - (3) Date of employment.
  - (4) Written verification that employee is at least 18 years of age, which shall include but not be limited to a copy of his birth certificate or driver's license.
  - (5) Home address and telephone number.
  - (6) Educational background.
    - (A) For administrators this shall include verification that he/she meets the educational requirements in Sections 87564(b) and (c).
  - (7) Past experience, including types of employment and former employers.

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**HANDBOOK BEGINS HERE**

- (A) Section 1569.17(b)(2) of the Health and Safety Code provides:

Any person, other than a client, residing in the facility.

- (B) Section 1569.17(c)(4) of the Health and Safety Code provides in part:

Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision.

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**HANDBOOK ENDS HERE**

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- (8) Type of position for which employed.
- (9) Termination date if no longer employed by the facility.
- (10) Reasons for leaving.

**87566 PERSONNEL RECORDS (Continued)****87566**

- (11) A health screening as specified in Section 87565.
- (12) Hazardous health conditions documents as specified in Section 87565.
- (13) For employees that are required to be fingerprinted pursuant to Section 80019:
  - (A) A signed statement regarding their criminal record history as required by Section 87219(d).
  - (B) Documentation of either a criminal record clearance or a criminal record exemption as required by Section 87219(e).
    - 1. For Certified Administrators, a copy of their current and valid Administrative Certification meets this requirement.
- (b) Personnel records shall be maintained for all volunteers and shall contain the following:
  - (1) A health statement as specified in Section 87565(e).
  - (2) Health screening documents as specified in Section 87565(e).
  - (3) For volunteers that are required to be fingerprinted pursuant to Section 87219:
    - (A) A signed statement regarding their criminal record history as required by Section 87219(d).
    - (B) Documentation of either a criminal record clearance or a criminal record exemption as required by Section 87219(e).
- (c) Licensees shall maintain in the personnel records verification of required staff training and orientation.
  - (1) The following staff training and orientation shall be documented:
    - (A) For staff who assist with personal activities of daily living, there shall be documentation of at least ten hours of initial training within the first four weeks of employment, and at least four hours of training annually thereafter in one or more of the content areas as specified in Section 87565(c)(2).
    - (B) For staff who provide direct care to residents with dementia in a facility in which the licensee advertises dementia special care, programming, and/or environments, the licensee shall document the following:
      - 1. The orientation received as specified in Section 87725.1(a)(1).

**87566 PERSONNEL RECORDS (Continued)****87566**

2. The in-service training received as specified in Section 87725.1(a)(2).
- (2) Documentation of staff training shall include:
    - (A) Trainer's full name;
    - (B) Subject(s) covered in the training;
    - (C) Date(s) of attendance; and
    - (D) Number of training hours per subject.
  1. If the training is provided by a trainer in a classroom setting, documentation shall consist of notices of course completion signed by the trainer.
  2. If the educational hours/units are obtained through an accredited educational institution, documentation shall include a copy of a transcript or official grade slip showing a passing mark.
  3. If the educational hours/units are obtained through continuing education, documentation shall include a transcript or official grade slip showing a passing mark, if applicable, or a Certificate of Completion.
- (d) The licensee shall maintain documentation that an administrator has met the certification requirements specified in Section 87564.2 or the recertification requirements in Section 87564.3.
  - (e) In all cases, personnel records shall demonstrate adequate staff coverage necessary for facility operation by documenting the hours actually worked.
  - (f) All personnel records shall be maintained at the facility and shall be available to the licensing agency for review.
    - (1) The licensee shall be permitted to retain such records in a central administrative location provided that they are readily available to the licensing agency at the facility upon request.
    - (2) The licensing agency shall be entitled to inspect, audit, remove if necessary, and copy the personnel records upon demand during normal business hours.
  - (g) All personnel records shall be retained for at least three (3) years following termination of employment.

NOTE: Authority cited: Sections 1569.30 and 1569.616, Health and Safety Code. Reference: Sections 1569.30, 1569.31, 1569.312, 1569.613, 1569.616, 1569.625, and 1569.626, Health and Safety Code.